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TRACY HOPE DAVIS

11 **UNITED STATES BANKRUPTCY COURT**
12 **DISTRICT OF NEVADA**

13 In re
14 CASH CLOUD, INC. dba COIN CLOUD,
15 Debtor.

16 Case No: 23-10423-mkn
Chapter 11
Date: February 15, 2023
Time: 10:30 a.m.
Location: Foley Courtroom 2, Telephonic

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18 **UNITED STATES TRUSTEE'S OPPOSITION AND RESERVATION OF RIGHTS**
19 **TO DEBTOR'S EMERGENCY MOTION FOR ORDER ESTABLISHING CERTAIN**
CASE MANAGEMENT, NOTICE, AND ADMINISTRATIVE PROCEDURES

20 Tracy Hope Davis, United States Trustee for Region 17 (the “U.S. Trustee”), by and
21 through her undersigned counsel, hereby files her *Opposition and Reservation of Rights*
22 (“Opposition”) to the *Emergency Motion for Order Establishing Certain Case Management,*
23 *Notice, and Administrative Procedures* [ECF No. 10] (“Case Management Motion”) filed by
24 Debtor Cash Cloud, Inc. dba Coin Cloud (the “Debtor”).¹

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27 ¹ Unless otherwise noted: “Section” refers to a section of title 11 of the United States Code, 11
28 U.S.C. §§ 101-1532 (as amended, the “Bankruptcy Code”); “ECF No.” refers to the bankruptcy
docket for the above-captioned case; “Fed. R. Bankr. P.” refers to the Federal Rules of

1 **INTRODUCTION**

2 Debtor's Case Management Motion should be adjourned until a later date. The
3 adjournment would permit parties that were not provided sufficient notice and any official
4 committee of unsecured creditors the opportunity to be heard. If the Court grants the Case
5 Management Motion, the relief requested should not be approved except to the extent that it
6 complies with Fed. R. Bankr. P. 2002(a), 7004, and 9014(b).

7 The U.S. Trustee reserves all rights with respect to the Case Management Motion, which
8 is scheduled for hearing on the above-captioned date and time, including, but not limited to her
9 right to take any appropriate action under the Bankruptcy Code, the Federal Rules of Bankruptcy
10 Procedure, and the Local Bankruptcy Rules for the U.S. Bankruptcy Court for the District of
11 Nevada.

12 The U.S. Trustee's Opposition is supported by the following memorandum of points and
13 authorities and any argument the Court may permit during the hearing.

14 **MEMORANDUM OF POINTS AND AUTHORITIES**

15 I. **BACKGROUND**

16 1. On February 7, 2023, Debtor filed a voluntary petition under Chapter 11 of the
17 U.S. Bankruptcy Code commencing the above-captioned case. [See ECF No. 1].

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24 Bankruptcy Procedure; "Fed. R. Evid." refers to the Federal Rules of Evidence. The U.S.
25 Trustee requests that the Court take judicial notice of the pleadings and documents filed in this
26 case, pursuant to Fed. R. Bankr. P. 9017 and Fed. R. Evid. 201. To the extent that the Omnibus
27 Opposition contains factual assertions predicated upon statements made by Debtor, its agents,
28 attorneys, professionals, or employees, the U.S. Trustee submits that such factual assertions are
supported by admissible evidence in the form of admissions of a party opponent under Fed. R.
Bankr. P. 9017 and Fed. R. Evid. 801(d)(2).

1 2. The Section 341 meeting of creditors is scheduled for March 16, 2023. [See ECF
2 No. 2].

3 3. Neither an Official Committee of Unsecured Creditors nor a trustee has been
4 appointed in this case. [See ECF Docket generally].

5 4. Debtor has not filed its summary of schedules, Schedules A/B through H,
6 statement of financial affairs, list of equity security holders, or the disclosure of compensation
7 required by Fed. R. Bankr. P. 2016. [See ECF No. 22].

8 5. Debtor requested an extension of time to file its schedules and statements to
9 March 9, 2023, which was granted during the associated first day hearing, the order for which is
10 pending entry by the Court. [See ECF No. 3].

11 6. The hearing on the Case Management Motion was set on shortened time for the
12 above-captioned date and time with oppositions due by February 13, 2023. [See ECF No. 30].

13 7. The Case Management Motion was filed on February 7, 2023 and is supported by
14 the omnibus declaration of Christopher Andrew McAlary [ECF No. 19] (“McAlary
15 Declaration”).

16 II. **AUTHORITIES & DISCUSSION**

17 A. **The Relief Requested in Debtor’s Case Management Motion Should Not Be
18 Approved Except to the Extent it Complies with Fed. R. Bankr. P. 2002(a),
2004, and 9014(b).**

21 8. Motions initiating contested matters must be served in the manner provided for
22 service of a summons and complaint in Federal Bankruptcy Rule 7004. See Fed. R. Bankr. P.
23 9014(b). Moreover, Federal Bankruptcy Rule 2002(a) identifies a number of notices that must
24 be served on all creditors. See Fed. R. Bankr. P. 2002(a); *In re SoCalDeal, Inc.*, 2021 WL
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1 3702206, at *1 (Bankr. C.D. Cal. Aug. 19, 2021) (“Federal Rule of Bankruptcy

2 Procedure 2002(a)(3) requires 21 days’ notice to all creditors”).

3 9. Here, the procedures proposed in the Case Management Motion (the “Case
4 Management Procedures”) generally contemplate service by email on a limited “Service List.”
5 See Case Management Motion, at ¶¶ 4, 13-15.

6 10. The authorization of electronic service would not apply to service of a summons
7 and complaint in an adversary proceeding. See Case Management Motion, at ¶ 13. There does
8 not appear to be a similar exclusion for motions initiating contested matters. The Case
9 Management Procedures should be amended to expressly provide that motions initiating
10 contested matters shall be served on affected parties in the manner prescribed by Federal
11 Bankruptcy Rule 7004. See Fed. R. Bankr. P. 9014(b).

12 11. The Case Management Procedures generally do not apply to certain court filings
13 (“Excluded Filings”) governed by Federal Bankruptcy Rule 2002. See Case Management
14 Motion, at ¶ 9. However, the Excluded Filings do not include the matters identified in Federal
15 Bankruptcy Rules 2002(a)(3) and 2002(a)(6). *Id.*, at ¶¶ 9, 15. Further, the Excluded Filings
16 include notices under Federal Bankruptcy Rule 2002(a)(2) only “to the extent that such use, sale
17 or lease concerns all or substantially all of the [d]ebtor’s assets.” *Id.*, at ¶ 9. The Case
18 Management Procedures should be amended to expressly provide that notices under Federal
19 Bankruptcy Rules 2002(a)(2), (3), and (6) shall be served on all creditors, at least until the U.S.
20 Trustee appoints an official committee of unsecured creditors, assuming there is sufficient
21 interest to appoint one in this case. See Fed. R. Bankr. P. 2002(a), (i).

22 12. Additionally, the Case Management Procedures contemplate that objections to
23 expedited motions brought on less than 14 days’ notice shall be due 5 days before the hearing
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1 date. *See* Case Management Motion, at ¶ 6a. The Case Management Procedures should be
2 amended to be consistent with Local Bankruptcy Rule 9006(c) (*i.e.*, opposition to any expedited
3 motion must be filed 2 business days before the hearing and where the order shortening time is
4 entered less than 3 business days before the hearing, no written opposition is required).
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6 13. In addition, the Case Management Procedures contemplate that any creditor who
7 is required, but fails, to timely file a proof of claim (“Excluded Creditors”) “shall not be entitled
8 to further notice.” *See* Case Management Motion, at ¶ 10. Debtor cites Federal Bankruptcy
9 Rule 3003(c)(2) for this relief. *Id.* That rule does not address notice, but rather provides that
10 “any creditor who fails [to timely file a proof of claim] shall not be treated as a creditor...for the
11 purposes of *voting and distribution*.” *See* Fed. R. Bankr. P. 3003(c)(2) (emphasis added). Thus,
12 Debtor’s request to cease noticing Excluded Creditors should be denied.
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14 14. Finally, to avoid ambiguities with respect to the relief afforded by the Court, the
15 following language should be added at the end of paragraph 1 of the proposed Order: “to the
16 extent set forth herein.” *See* ECF No. 10, at p. 20 of 23.
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CONCLUSION

19 15. Debtor’s Case Management Motion should be adjourned until a later date. The
20 adjournment would permit parties that were not provided sufficient notice and any official
21 committee of unsecured creditors the opportunity to be heard. If the Court grants the Case
22 Management Motion, the relief should be modified as set forth herein.
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24 16. The U.S. Trustee expressly reserves her rights to object to any amendments or
25 supplements to the Case Management Motion and/or any other additional relief requested in any
26 subsequently filed pleadings.
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WHEREFORE, the U.S. Trustee respectfully requests that the Court sustain her Opposition to the Case Management Motion and grant such other relief as is just and equitable under the circumstances.

Dated: February 13, 2023

TRACY HOPE DAVIS
UNITED STATES TRUSTEE

/s/ Jared A. Day
Jared A. Day
Trial Attorney for United States Trustee

CERTIFICATE OF SERVICE

I, ANABEL ABAD SANTOS, under penalty of perjury declare: That declarant is, and was when the herein described service took place, a citizen of the United States, over 18 years of age, and not a party to nor interested in, the within action; that on February 13, 2023, I caused a copy of the foregoing

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to be served on the following parties:

- a. ECF System (attach Notice of Electronic Filing or list of persons & addresses):

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I declare under penalty of perjury that the foregoing is true and correct.

Signed: February 13, 2023

/s/ Anabel Abad Santos
ANABEL ABAD SANTOS